

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6329 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAVANJI CHANDUJI THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6329 of 2001
MR NM KAPADIA for Petitioner No. 1
MR DP JOSHI, AGP, for Respondents No. 1-3
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on July 18, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Javanji Chanduji Thakor under the provisions of

the said Act.

2. The detaining authority took into consideration one offence registered against the petitioner on February 14, 2001, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Kapadia learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on 17.7.2001 and the order detention was on 18.7.2001 passed. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. Mr. Kapadia submitted further that the offence registered against the detenu relates to February 14, 2001 and the order is passed on July 18, 2001. Therefore, there is no live link between the activities of the detenu and the order of detention. He, therefore, submitted that the petition may be allowed.

4. Mr. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on July 16, 2001. The same have been verified by the detaining authority on July 17, 2001 and the order is passed on July 18, 2001. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section

9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (*Bai Amina v. State of Gujarat & Ors.*, 1981 GLR 1186 and *Kalidas Chandubhai Kahar v. State of Gujarat & Ors.*, 1993(2) GLR 1659).

6. Adverting to the offence registered against the detenu, the same relates to February 14, 2001 and, therefore, it is a stale incident which cannot form a valid ground for detention as there is no livelink between the activities of the detenu and the order of detention. Hence, this petition deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 13th July, 2001, passed against the detenu is hereby quashed and set aside. The detenu-Javanji Chanduji Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]